

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2839 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MAHESHKUMAR H JOSHI

Versus

STATE OF GUJARAT  
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Appearance:

MR PV HATHI for Petitioner  
Mr H H Patel for M/S PATEL ADVOCATES for  
Respondent No. 1, 2  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/03/2000

CAV JUDGEMENT

The petitioner, who has filed this petition under Article 14,19 and 226 of the Constitution of India, is a Lecturer, was working in Government Colleges at Ahwa (Dangs) and Gandhinagar. His main prayer is that he be paid the salary falling due to him during the period of vacation with 12% interest on account of Government

Resolution and Government policy in this behalf.

2. The petitioner claims that he obtained Master's Degree in Commerce and was appointed as Lecturer in the pay scale of Rs.700-1600 by different orders in the years 1983, 1984 and 1985 in Government Colleges at Ahwa (Dangs) and Gandhinagar. Details of the services rendered by him can be gathered from para 5 of the petition and it is reproduced for ready reference as under:

Academic Year	Period of appointment	Period served	period of vacation
1983-84	Upto end of 2nd term (Ahwa)	20.10.83 to 7.4.1984	8.4.84 to 27.6.84
1984-85	Upto end of first term (Gandhinagar)	1.8.1984 to 20.10.1984	21.10.84 to 11.11.84
1984-85	Upto end of second term (Gandhinagar)	12.11.1984 to 6.4.1985	7.4.85 to 25.8.85

The initial appointment order appointing the petitioner as Lecturer in Government College dated 17.10.1983 has been placed at Annexure 'A' at page 12 to the petition. The petitioner claims that though he is entitled to the vacation salary for the period intervening vacation period, he has not been paid the said salary. Therefore, the petitioner served the respondents with notice and yet the salary was not paid for the said intervening period. He claims that he is entitled to the vacation salary in view of the Government Policy and Resolutions. Since the vacation period salary has not been paid to him, he has approached this Court by way of this petition for appropriate writ, order or direction directing the respondent to pay to the petitioner the salary as was payable to him with 12% running interest thereon from 1.9.1985 till the deposit or payment for the period of vacation mentioned hereinabove. For the aforesaid purpose, the petitioner relied upon a Government Resolution dated 13.11.1967 placed at Annexure 'B' at page 18 to the petition.

2. The petition was admitted and notice was issued to the respondents. Learned AGP has put in appearance in the matter. However, no affidavit-in-reply has been filed

on behalf of the respondent-State.

3. I have heard Mr P V Hathi, learned Advocate appearing for the petitioner and Mr H H Patel, learned AGP for the respondents.

4. I have gone through the material available on record. The petitioner has submitted the initial order of appointment dated 17.10.1983 at Annexure 'A' at page 12 to the petition which shows that the petitioner was appointed as Lecturer in Government College at Ahwa in Dangs District for the period upto the end of the second term for the academic year 1983-84. By order dated 15.9.1984 placed at Annexure 'A' page 14 to the petition, he was appointed as Lecturer in Government College at Gandhinagar for the period upto first Academic term for the academic year 1984-85.

5. It is the case of the petitioner that in all he served for the period mentioned hereinabove during the period 1983-84 and 1984-85. It is also his case that the period of intervening vacation fell from 8.4.1984, 27.6.1984, 21.10.1984 to 11.11.1984 and 7.4.85 to 25.8.1985. It is his case that he has not been paid salary for the aforesaid vacation period and he is entitled to the said salary and allowances for the said period.

6. As stated above, the respondents have not been filed affidavit-in-reply and no documents have been produced by the respondents. Mr H H Patel, learned AGP has argued the matter on the strength of the appointment order and Government Resolution dated 13.11.1967 produced by the petitioner along with the petition.

7. The main argument advanced on behalf of the petitioner by learned Advocate Mr P V Hathi is that the petitioner has worked for the substantial period of the academic sessions mentioned above, and therefore, he is entitled to vacation salary for the period stated hereinabove. It is also submitted that the petitioner is entitled to full vacation salary for the period indicated above. For this purpose he has relied upon the appointment orders placed on record by the petitioner along with the petition and referred to hereinabove at Annexure 'A' at pages 12, 14 and 16.

8. Learned AGP has not seriously disputed the aforesaid position and, therefore, it has become an admitted position that the petitioner has served the Government Colleges for the period indicated hereinabove.

It is, therefore, to be decided whether the petitioner will be entitled to vacation salary as claimed by him.

9. Learned Advocate for the petitioner and well as the learned AGP, both have relied upon the Government Resolution through Education Department dated 13.11.1967 placed at Annexure 'B' at page 18. The material part of the Resolution is reproduced for ready reference as under:

"Government is pleased to direct that the following procedure should be followed in the matter of payment of vacation salaries to members of the staff in Government Colleges under the control of the Education and Labour Department who ceases to be teachers at the end of the 1st and 2nd term:

(i) A member of the teaching staff in a college who ceases to be a teacher at the end of the second term or at the end of the first term as the case may be should be paid his salary in accordance with the following:

(a) if he has served for the major part of the whole academic year he should be paid his salary upto 14th June following the end of the second term,

(b) if he has served for the major part of the first term, he should be paid his salary upto the 31st October.

(c) if he has served for the major part of the second term only, he should be paid his salary upto 31st of March.

The above Resolution makes it clear that if a Lecturer has served for the major part of the whole academic year, he should be entitled to salary upto 14th June following the end of the second term. In other words, in such an event, the Lecturer will be entitled to salary for the summer vacation as per sub clause (a) of para (i) of the said Resolution. Sub-clause (b) says that if the Lecturer has served for the major part of the first term, he should be paid salary upto 31st October. This would mean that if the Lecturer had attended major part of the first term, he would be entitled to salary upto the end of the first academic term. Clause (c) says that if the Lecturer has served for the major part of the second term

only, he would be entitled to salary upto 31st March. This would mean that if the Lecturer has served for major part of the second term, he would be entitled to salary upto the end of the second academic term.

10. If we turn to page 5 of the petition, it is very clear that during the academic year 1983-84 the present petitioner served at Ahwa for the period between 20.10.1983 to 8.4.1984. It was followed by summer vacation from 8.4.1984 to 27.6.1984. A question has arisen as to whether the petitioner will be entitled to salary for the said summer vacation.

11. Learned Advocate for the petitioner has very vehemently contended that since the petitioner has served for the major part of the first term in this academic year, he would be entitled to vacation salary for the period 8.4.84 to 27.6.84.

As against this, Mr H H Patel, learned AGP claims that the petitioner will not be entitled to vacation salary as claimed by him. It is more or less an admitted position that the academic year normally commences on or after 14th June every year. In other words, the academic year would be between June of one year and May of the subsequent year. It is a fact that the petitioner started serving from 20.10.1983 and he worked upto 7th April, 1984. This would mean that he started with the second academic term. In other words, he never served the Government College as Lecturer in the first academic term which must have commenced in or around June, 1983. Therefore, it is the specific case of the petitioner that he served the Government College only during the second academic term, i.e. he did not serve for the whole academic year 1983-84. In the aforesaid view of the matter, clause (a) referred to above will not come into play since it would come into play only if the Lecturer has served for the major part of the whole academic year. Summer vacation salary would be payable only if the Lecturer has served for the major part of the whole academic year. In the present case, I find that the petitioner started his job in the second term and, therefore, it cannot be said that he has served for the major part of the whole academic year 1983-84. In that view of the matter, his case would not fall within the four corners of clause (a) referred to above and, therefore, he would not be entitled to summer vacation salary. For this purpose, the arguments of Mr Hathi did not convince me and hence I am of the clear decision that clause (a) will not be applicable and consequently the petitioner will not be entitled to summer vacation salary

following 7th April, 1984. In other words, the salary claimed by the petitioner for the summer vacation between 8.4.84 and 27.6.84 will not be available to the petitioner and he will not be entitled to this salary.

12. The petitioner claims vacation salary for the period between 21.10.84 and 11.11.84.

The table reproduced above makes it clear that during the academic year 1984-85, the petitioner started service from 1.8.84 and he worked upto 20.10.84. This would mean that he actually served for the major part of the first academic term in the academic year 1984-85. Clause (b) of the aforesaid Resolution dated 13.11.1967 makes it clear that if a Lecturer has served for the major part of the first term, he should be paid salary upto 31st October. In the present case, it is found that the term was extended on account of administrative reasons. Therefore, in my view, the petitioner would be entitled to vacation salary for the period between 21.10.84 and 11.11.84 on the basis of the Resolution dated 13.11.1967. Therefore, when vacation has been changed here or there, then in that event, salary will also be required to be paid accordingly. Therefore, I am of the view that the petitioner would be entitled to vacation salary for the period between 21.10.84 and 11.11.84 since he has rendered service for the major part of the first academic term. On the other hand, Mr H H Patel, learned AGP had no answer to this claim of the petitioner and I find it to be just and proper and legal and hence the petitioner should be paid salary for the said period.

13. So far as the term 1984-85 is concerned, the petitioner had also rendered service between 12.11.84 and 6.4.85 which was naturally the second academic term of the academic year 1984-85. The period clearly indicates that the petitioner has rendered service for the major part of the second academic term. In that event clause (c) of the aforesaid Resolution dated 13.11.1967 will come into play. The said sub-clause makes it clear that if the petitioner had served for the major part of the second term then he would be paid salary upto March 31st. It was also made clear by the petitioner that the vacation was extended. Moreover, so far as 1984-85 is concerned, the petitioner started serving from 1.8.1984 and he worked upto 6.4.1985. This clearly shows that the petitioner rendered service for the major part of the academic year 1984-85. In that view of the matter, even clause (a) will be applicable according to which the petitioner would be entitled to salary for summer

vacation upto 14th June. However, it has been clearly indicated by the petitioner that the term was extended upto 6th April and therefore, the vacation was also extended upto 25.8.85, on account of local difficulties. As indicated above, we will have to go by clause (a) of the Resolution dated 13.11.1967 which clearly shows that the Lecturer, who has rendered service for the major part of the academic year, would be entitled to salary upto the date on which the College reopen after summer vacation. This indicates that such a Lecturer would be entitled to full vacation salary for the entire summer vacation period.

14. It is clearly indicated that the period of vacation was extended upto 25.8.85. The respondents have not filed any counter affidavit to controvert the said allegation. Therefore, the averments made in page 5 of the petition must be accepted to be true. Therefore, it must be held that the period of vacation was extended upto 25.8.1985. Consequently, the petitioner had rendered services for the major part of the academic year 1984-85 and therefore, he would be entitled to salary for the summer vacation which was between 7.4.85 and 25.8.85. In other words, the petitioner would be entitled to vacation salary for the following period:

- (1) 21.10.84 to 11.11.84
- (2) 07.04.85 to 25.08.85

15. This is quite in accordance with the G.R. dated 13.11.1967. I am also of the view that the petitioner will not be entitled for vacation salary for the period between 8.4.1984 and 27.6.1984. In view of the above, there is merit in favour of the petitioner so far as the academic year 84-85 is concerned and at the same time, there is no merit in the contention that he is entitled to summer vacation salary in the academic year 1983-84. In my view, the petitioner will not be entitled to summer vacation salary during the academic year 1983-84 and that part of the petition deserves to be dismissed. On the other hand, the petitioner will be entitled to vacation salary for the purpose indicated above during the academic year 1984-85. That part of the petition deserves to be allowed.

16. Under the above circumstances, I am of a clear decision that the petitioner is entitled to vacation salary as aforesaid, and therefore, it is directed that the petition be partly allowed. The respondents are hereby directed to pay to the petitioner the vacation salary and allowances as may be admissible under the Rule

for the time in force for the period between 21.10.84 and 11.11.84 and between 7.4.85 and 25.8.85. The petition is, therefore, partly allowed to the aforesaid extent. The respondent shall also pay interest to the petitioner on the aforesaid dues at 12% per annum from the date of pension till the date of payment. However, it is made clear that if the amount is paid within two months from the date of this order, the rate of interest shall of 9% per annum. It is further made clear that the petitioner is not entitled to vacation salary from 8.4.84 to 27.6.84. That part of the petition is ordered to be dismissed. The respondents shall pay cost of the petitioner.

Rule made absolute accordingly to the extent indicated above.

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msp.